

STATE TAX COMMISSION

of

for redetermination of deficiency
of franchise tax under Article 9-A
of the tax law for calendar year
1968.

It is found:

(4) An office in Los Angeles, California, was leased and furnished by the taxpayer. A monthly rental of \$235 is paid by the taxpayer, of which \$135 is reimbursed by Mr. Joseph

Odenberg, its California sales representative. Mr. Odenberg occupies the office and uses it to sell products of the taxpayer as well as other non-competing lines. Mr. Byk, the president of the corporation, spends three or four weeks a year in California and while there uses this office.

(5) Consigned merchandise owned by the taxpayer is located at stores and warehouses of several large California customers.

(6) On November 16, 1970 notice of deficiency for the calendar year 1968 was issued by the Corporation Tax Bureau re-computing the tax due by disallowing the allocation claimed.

The deficiency was computed as follows:

Entire net income	\$111,157.90
Tax at 7%	7,781.05
Tax paid	5,466.19
Deficiency	\$ 2,314.86

(7) Petition for redetermination of deficiency was timely filed.

(8) Section 210.3(a)(4) states, in part,

"provided, however, that if the taxpayer does not have a regular place of business outside the state other than a statutory office, the business allocation percentage shall be one hundred per cent;"

(9) Sections 4.11 b and 4.11 c of Ruling of the State Tax Commission dated March 14, 1962 states as follows:

"b. A regular place of business is any bona fide office (other than a statutory office), factory, warehouse, or other space which is regularly used by the taxpayer in carrying on its business. * * *."

"c. A taxpayer does not have a regular place of business outside the state solely by consigning goods to an independent factor outside the state for sale at the consignee's discretion."

The State Tax Commission hereby

DECIDES:

(A) The office leased and furnished by the taxpayer which is used and occupied by the sales agent is not a regular

place of business as contemplated by Section 4.11 b of the Regulations since it is actually the place of business of the sales agent.

(B) That taxpayer does not have a regular place of business outside the state by virtue of consigned merchandise at stores and warehouses of its customers for sale at the consignee's discretion.

(C) The notice of deficiency issued on November 16, 1970 is affirmed together with interest computed in accordance with Section 1084 of Article 27 of the tax law.

Dated: Albany, New York

this 18th day of August 1972.

STATE TAX COMMISSION



President



Commissioner



Commissioner